IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1008 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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SHIVABHAI NANUBHAI @ NANJIBHAI RATHOD - Appellant(s)
Versus
THE STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR AJAY L PANDAV for Appellant(s) : 1,
MS DS PANDIT, LD.APP for Opponent(s) : 1,
RULE SERVED BY DS for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 16/08/2007

ORAL JUDGMENT

1. Heard Shri Ajay Pandav, learned counsel appearing for the appellant-orig.accused no.1 and Ms.D.S. Pandit, learned Additional Public Prosecutor, appearing on behalf of the respondent-State.

2. Today the respondent no.2-orig.accused no.2 namely Budhabhai Shamjibhai Parmar, who has been held guilty along with the appellant-orig.accused no.1, is present in the Court. He was not required to be brought in person before this Court but on account of some misunderstanding, the Jail Authority has sent the respondent no.2 herein in person before this Court today. His response to the claim of muddamal motorcycle was required to be conveyed on service of notice. When the respondent no.2 herein is present in the Court, the learned Additional Public Prosecutor after getting instructions from him states that the respondent no.2 is not interested in the custody of the muddamal vehicle which was seized by the police during the course of investigation.

3. Ms.D.S. Pandit, learned Additional Public Prosecutor, submits that this appeal can be disposed of today by remanding the matter to the trial Court because the learned trial Judge has not assigned any reasons as to why

the muddamal vehicle is required to be confiscated to the State or why the same is required to be destroyed, as ordered by the learned trial Judge in the operative portion of the judgment and order of conviction and sentence. It is submitted that the learned trial Judge may be asked to go through the papers, apply his mind and decide as to what may be done qua the motorcycle which was seized and part of muddamal before the trial Court.

4. Shri Pandav, learned counsel appearing for the appellant herein, submits that this Court may decide the appeal favourably and may order that the motorcycle may be handed over to the present appellant-orig.accused no.1.

5. So considering the totality of facts and circumstances of case, the nature of allegations made against the appellant herein and the fact that the appellant has been held guilty of a serious charge of offence punishable under Section 376 of the Indian

Penal Code, the matter should be remanded to the trial Court so that the learned trial Judge can pass a specific order as to disposal of the muddamal motorcycle bearing Registration No.GJ-14-F-7158 (Hero Honda Splendor Model), the learned trial Judge obviously shall enter into inquiry himself and ascertain as to who is the real person who can be handed over the custody of the muddamal motorcycle. The learned trial Judge ought to have assigned reasons and confiscated the vehicle to the State at the conclusion of the trial in exercise of powers vested with the Court under Section 452 of the Code of Criminal Procedure, 1973, but it has not been done. In the same way, when an article like motorcycle was there before the Court as muddamal, how and in what circumstance, the learned trial Judge has directed to destroy all muddamal articles as it would include motorcycle also. It appears that the learned trial Judge was not aware while ordering destruction of all muddamal articles about

existence of aforesaid motorcycle as one of the articles amongst the list of muddamal. So it would be proper for the Court to direct the learned trial Judge to issue notice to the present appellant and the State; and thereafter, to decide about disposal of the muddamal motorcycle. If the appellant is the owner of the muddamal motorcycle or otherwise he is entitled to have the custody of the same, the learned trial Judge may decide accordingly at the end of inquiry. Pendency of the Criminal Appeal before this Court filed against the judgment and order of conviction and sentence would not come in the way of the learned trial Judge in deciding the issue because, according to Shri Ajay Pandav, learned counsel appearing for the appellant herein, the appellant is not going to take any issue as to the identity and use of muddamal motorcycle in question in the appeal preferred against the judgment and order of conviction and sentence.

6. For short, in view of aforesaid observations

and discussion, the present appeal is hereby partly allowed. The order of destruction of muddamal dated 01st April 2006 passed by the learned Additional Sessions Judge and Presiding Officer, 02nd Fast Track Court, Amreli in Sessions Case No.21 of 2005 in the operative portion, so far as the muddamal motorcycle is concerned, is hereby quashed and set aside. The learned trial Judge is hereby directed to decide the issue as to the disposal of the muddamal motorcycle on its own merits after issuing notice to the concerned parties, including the present appellant. Direct Service is permitted.

(C.K. Buch, J)

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